IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1251 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT – Appellant
Versus
NARAN SHIVJI PRAJAPATI - Respondent

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant:
MR MAHENDRA K PATEL for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/12/2006

ORAL JUDGMENT

1. Heard Shri. M.A. Patel, learned APP for the appellant State and Shri. Pinakin B. Raval for Shri. Mahendra K. Patel, learned advocate for

respondent original accused.

2. The State of Gujarat has preferred this appeal under section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as the 'Code' for brevity), challenging the judgment & order of acquittal dated 24/9/1992 passed by learned JMFC, Anjar at Kutch in Criminal Case no. 548 of 1987, acquitting the present respondent / original accused of the charge of commission of offence under section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act' for brevity). This Court (Coram: N.J. Pandya, J) vide order dated 29/7/1993 granted leave and admitted the appeal and the same is taken up for final disposal today.

3. The facts in brief leading to filing of this appeal deserves to be set out as under.

3.1 The original complainant / Food Inspector at the relevant time in discharge of his duty as such purchased milk candy from the accused/ respondent on 14/5/1987 at about 16.00 hours near S.T. Bus Stop, Anjar, after notifying his intention to have the milk candy sample tested by the Public Analyst. The notice under form no.6 Rule 12 came to be issued whereon counter signature of the accused was obtained. The food article in question was purchased in presence of

panch witness, who has also signed the notice under Rule 12 and the same is produced at exhibit-20. The Food Inspector purchased about 900 grams of candy on payment of Rs.11=50. The cash memo was also obtained which bears signature of the accused and the panch. The same is produced at exhibit-21. The ice milk candies were collected in clean vessel and was allowed to melt and after it was melted, divided into three equal parts and again collected in clean, odourless glass bottles. After adding 24 drops of liquid formalin preservative the bottles were sealed with air tight corks. The bottles were sealed in accordance with law and the serial number of Local Health Authority etc. were affixed therein. The entire procedure of sealing and labeling was carried out in presence of panch witness and the panchnama was also drawn. The panchnama is produced on record. On 15/7/1987 Food Inspector prepared memorandum in form no. 7 specimen copy of seal impression and sent one sample out of the three to the Public Analyst at Rajkot and the remaining samples were sent to Local Health Authority. Office copy of the memorandum is at exhibit-22. The Public Analyst opined in his report that the sample food article was not in conformity with the rules laid down in the provision of Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'PFA Rules'). The papers were prepared and forwarded to the competent authority for obtaining

sanction for prosecuting the accused on account of his selling adulterated food article to the Food Inspector and committing offence under section 7 and 16 of the PFA Act. The sanction was accorded by concerned Local Health Authority, the signature whereof is identified by the Food Inspector and therefore same was produced at exhibit-25.

3.2 The complaint was lodged, which came to be registered as Criminal Case No. 548 of 1987. Notice under section 13 (2) came to be issued by the concerned authority intimating the accused that he has a right to have part of the remaining sample tested at Central Food Laboratory and the report of the Local Health Authority also sent along with the notice. Office copy of the notice sent by registered A.D. Post under section 13 (2) of the Rules has been produced at exhibit-61.

3.3 It is recorded by the trial court that, at the per evidence stage the accused did admit the charge. However as it appears from the record nothing had happened thereafter, and the trial court had decided it by reasoned order and the charge was framed on 21/5/1992. The accused was called upon to answer the charge, who at that time declined and denied the charge. After recording evidence of the prosecution, accused statement was also recorded wherein also he has denied the case of the prosecution. The trial

court has come to the conclusion that the prosecution has not proved the case beyond doubt and therefore, acquitted the accused of the charge of commission of offence under section 7 and 16 of the PFA Act.

4. Shri. Patel, learned APP appearing on behalf of the appellant has submitted that, it has come on record as it is noticed by the trial court that the accused had initially at pre evidence stage pleaded guilty and therefore, the logical conclusion of the case would have been his conviction and therefore, there was no scope for the trial court to frame the charge and lead evidence. Shri. Patel has submitted that the so called reasoned order of the trial court for framing the charge also does not deal with the aspect of recording of plea at the pre evidence stage. Shri. Patel has submitted that, in view of this, the acquittal appeal deserves to be allowed.

5. Shri. Patel has further submitted that the factum of adulteration in terms of deficiency in the food article is clear from the report of the food analysis and therefore the acquittal based upon tenuous ground of non compliance with Rule 17 should not have been the ground for acquittal, and, therefore also the order of acquittal deserves to be quashed and set aside. Shri. Patel has however could not point out any

document showing that the accused was served with notice under section 13 (2). Shri. Patel was given permission to produce and point out from record any document indicating clearly that the accused was served with notice under section 13 (2) along with report of the Public Analyst, as it is mandatory under Seton 13(2) of the PFA Act. Shri. Patel could point out only the averment of Senior Clerk of Local Health Authority whose deposition is recorded at exhibit-53 and submitted that the Clerk has clearly stated that the document was posted by registered post A.D. to the accused. The acknowledgment due receipt therefore ought to have been there on the record duly signed by the accused.

6. This Court has perused the record and proceedings of the case. Shri. Patel's submission in respect of plea recorded at the earlier stage deserves consideration. However it is also very important to note at this stage that the food article in question appears to have been collected way back in the year 1987 and the accused happens to be a small time vendor engaged in making and selling candies on the streets of Anjar town. The fact has remained that the order of framing charge has not been however challenged by the prosecution. Prosecution has never insisted upon plea which was recorded by the predecessor of the learned

trial Judge, who has pronounced the order of acquittal and the prosecution has consciously taken part and led evidence for establishing its case, and after unfolding of the entire evidence of the prosecution the trial court has come to the conclusion that the prosecution has failed in proving its case beyond doubt, now the appellant can not be permitted to fall back upon the plea of guilt that might have been recorded at the pre evidence stage. In any case, this being an acquittal appeal, at this stage if the appellant is unable to establish beyond reasonable doubt that the order of acquittal has resulted in to miscarriage of justice, this Court is of the view that the order of acquittal does not call for any interference.

7. It is all the more so in view of the following facts which emerge from the record.

Shri. Patel was asked to point out any document which can show that accused was served with notice under section 13(2) along with report of the Public Analyst. Shri. Patel could not point out any single document except testimony of Clerk of Local Health Authority, who merely says that it was posted by registered A.D. In absence of any document or any other proof indicating clearly that the accused had in fact received the notice under section 13(2) of the report, it can well be said that the

prosecution has failed in establishing due compliance with mandatory provision of section 13(2) of the PFA Act.

The report of the Public Analyst and details of the sample clearly show that the Food Inspector at the relevant time had not complied with mandatory provision of Rule 17 in as much as the containers were not put in a sealed packet while transmitting them to Public Analyst. The Public Analyst has clearly mentioned in his report in detail that the sample container wherein the bottle was sent was not sealed. The containers were received in an unsealed packet. Even a cursory glance at Rule 17 would clearly show that it was the duty cast upon the Food Inspector to see that sealed container of one part of the sample and memorandum in form no. 7 shall be sent in a sealed packet to the Public Analyst. Now, in the report of detail of sample sent along with memorandum clearly show the containers were sealed but packet carrying containers were not sealed. That is the clear finding of the trial court, which is the basis for pronouncing the order of acquittal. Thus the prosecution has failed in proving and establishing due compliance with Rule 17 of the PFA Rules, 1955.

In view of these facts and circumstances of the present case, Shri. Patel's submission that

the trial court ought to have passed appropriate order on the basis of recording of plea, though appears to be proper but not acceptable to this Court as the trial has been conducted and it is unfolded during trial that the accused was not really guilty of the offence charged against him. Therefore, the order of acquittal need not call for any interference at this stage. The sustaining of the order is required in the peculiar facts & circumstances of the present case only.

8. In the result, the order of acquittal passed by the trial court appears to have been just and proper and is not required to be interfered with. The appeal accordingly fails and is dismissed.

[S.R. BRAHMBHATT, J]

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